

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Sudeen G. Kelly.

ISO New England, Inc.  
New England Power Pool

Docket No. ER05-767-002

ORDER DENYING REHEARING OR CLARIFICATION

(Issued August 5, 2005)

1. On June 6, 2005, Boston Generating, LLC (Boston Generating), on behalf of its project companies, Mystic I, LLC, Mystic Development, LLC and Fore River Development, LLC requested rehearing and/or clarification of the Commission's May 6 Order in this proceeding.<sup>1</sup> In this order the Commission denies Boston Generating's request for rehearing or clarification, as discussed below.

**I. Background**

2. In its May 6 Order, the Commission accepted ISO New England, Inc.'s and New England Power Pool Participants Committee's (hereinafter, ISO-NE) proposed revisions (Tariff Amendment) to Appendix A of Market Rule 1 (Market Rule 1), section III of the Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, which modify the applicability of methods for calculating reference levels in certain circumstances for generators that are located in constrained areas and are needed for reliability.<sup>2</sup>

3. ISO-NE's market power mitigation rules provide three methods for calculating a generator's reference price: (1) the average of the generator's recent offers accepted in-merit; (2) the average of recent locational marginal prices (LMPs) during the lowest-priced 25 percent of hours when the generator has operated; and (3) an estimate of the generator's marginal costs.

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<sup>1</sup> *ISO New England*, 111 FERC ¶ 61,184 (2005) (May 6 Order).

<sup>2</sup> According to ISO-NE's Market Rule 1, reference prices help ISO-NE to identify resources that may be exercising market power. When an actual supply offer significantly exceeds its reference price, an investigation is triggered that may result in mitigation.

4. In its May 6 Order, the Commission accepted ISO-NE's proposal to remove the first and second methods for generators that run out-of-merit more than 50 percent of the time.<sup>3</sup> The Commission reasoned that in competitive markets a moving average of bids should reflect marginal costs, and, therefore, reference levels significantly above marginal costs represent an inefficient market outcome. Thus, units that are often needed for reliability regardless of their bids (because they are flagged as volt-ampere-reactive units (VAR), special constraint resource (SCR) or daily reliability-must-run (RMR) resources) should not be able to receive reference prices based on their offers. The May 6 Order established that, instead, reference prices for these units must be calculated using the third method, which estimates the generator's marginal costs based on a specific formula incorporating published spot-fuel prices, engineering-based heat rates, variable and operating maintenance costs and market-based emission costs.<sup>4</sup>

5. In the May 6 Order, the Commission also approved ISO-NE's motion for expedited consideration, and a waiver of the 60-day notice requirement in section 205 of the Federal Power Act (FPA)<sup>5</sup> and made the Tariff Amendment effective as of May 7, 2005.

## **II. Request for Rehearing**

6. Boston Generating argues that there was insufficient notice of the effectiveness of the Tariff Amendment and that supply offers for May 7, 8, and 9, 2005, which were submitted before the effective date of the revisions, should not be mitigated. It states that generators received notification from the Commission's eSubscription service of the May 6 Order after 6:00 pm on that date. Boston Generating argues that generators seeking to provide service for May 7 were required to submit their supply offers by 12:00 p.m. on May 6 and, thus, they submitted supply offers without knowing the effect of the Tariff Amendment. Boston Generating adds that some traders submitted bids for Saturday, May 8, and Sunday, May 9, on Friday, May 6, a common practice to avoid opening trading desks during weekend hours. Consequently, Boston Generating seeks clarification and/or rehearing of the May 6 Order so that supply offers, which were submitted prior to the effective date of the Tariff Amendment, for Saturday, May 7 through Monday, May 9, are compensated without being subject to mitigation.

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<sup>3</sup> May 6 Order at P 4.

<sup>4</sup> ISO New England Inc., FERC Electric Tariff No. 3, section III – Market Rule 1 – Standard Market Design, Standard Market Design, Appendix A – Market Monitoring, Reporting and Market Power Mitigation, § III.A.5.6.1(b), Methods for Determining Reference Levels, Original Sheet Nos. 7428-30 (2005).

<sup>5</sup> 16 U.S.C. § 824d (2000).

### **III. Responsive Pleading and Procedural Matters**

7. An answer to the rehearing request was filed by ISO-NE. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer because it has provided information that assisted us in our decision-making process.

### **IV. Commission Determination**

8. We will deny Boston Generating's rehearing request of our May 6 Order. We note, preliminarily, that Boston Generating does not assert that the revised rules are unjust or unreasonable and acknowledges that it received the notification of the Commission's order from the Commission's "eSubscription" service on the date the order was issued, May 6, 2005. Boston Generating's statements regarding notice are unpersuasive because any mitigation imposed on May 7 through May 9 resulted from the generators' business decisions. Boston Generating had opportunity on May 7 and May 8 to amend previous supply offers for May 8 and May 9 after receiving notice of the tariff change on May 6. As ISO-NE points out, the markets operate seven days per week, and a generator's failure to take advantage of bidding opportunities is not a reason to grant rehearing.

9. Supply offers for May 7, which were made on May 6, present a closer case but do not warrant delay in implementing the tariff amendment. Contrary to Boston Generating's argument, bids made pursuant to the previous rules neither violate the tariff changes that went into effect on May 6 nor result in undercompensation to generators. The tariff change did not require generators to amend their supply offers; rather, it acknowledged that divergence of reference levels from marginal costs is a market flaw and consequently accepted ISO-NE's proposed rectification of this flaw. We agree with ISO-NE that any supply offers that were mitigated were mitigated to the generator's marginal costs and the generator received the higher of its marginal costs or the applicable LMPs. That is a level that we would expect to see in competitive circumstances and is just and reasonable. As a result, we deny Boston Generating's request for rehearing or clarification.

The Commission orders:

Boston Generating's request for rehearing and/or clarification is hereby denied.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.